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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,908	01/04/2006	Gianluigi Roverio	R2019-7701US	6241

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CAMBRIDGE, MA 02142

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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11/19/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/551,908	Applicant(s) ROVERIO, GIANLUIGI	
	Examiner Helen F. Pratt	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 12 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Emarkaryan (3,060,033) or The Joy of Soup: Rose Petal Recipes (claim 12 only).

3. Claims 12 and 17-20 are product-by-process claims. Patentability does not depend on method of production, rather the product made. The different method of making does not make the product patentable over the prior art.

4. Emarkaryan teaches a sugary solution containing floral material. This sugary solution is further combined with other ingredients to produce confectionary products including jams, jellies, and Turkish delight (col. 3 lines 15-26).

5. The recipe to Rose Petal Syrup contains rose petals, water and sugar to make a syrup as in claim 12.

6. Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ermarkaryan (3,060,033) in view of Francis (Francis, F. J. 1999. Wiley Encyclopedia of Food Science and Technology. 2nd Edition. Volumes 1-4. pp. 2305-2321. John Wiley & Sons) and further in view of The joy of Soup: Rose petal Recipes.

9. For purposes of the prior art rejections, any method of cultivation will be considered to meet the limitations of claims 1-3 to particular methods of cultivation. Ermarkaryan teaches a method for preparing an edible sugary composition comprising harvesting fresh floral material and combining the material with sugar (col. 1, lines 30-35). The sugar and rose mixture may then be combined with water to form a sugary syrup comprising the floral material (Example IV). Claim 1 differs from the reference in the step of pasteurizing the aqueous solution at particular temperatures. However, Joy of Soup discloses a Rose Petal syrup made from rose petals, water and sugar in which the rose petals are simmered in water for an hour, and the syrup is strained through a fine sieve, then boiled and put in hot sterilized bottles (Rose Petal Syrup). Certainly, heating temperatures vary according to the degree of sterilization required and in how processed the product should be. It would have been within the skill of the ordinary worker to determine what temperatures to use to process a product as it is easy to determine how each temperature affects the product. The reference to Rose Petal syrup discloses straining out the rose petals. However, if one wanted to have a decorative product, it would have been within the skill of the ordinary worker to leave the petals in. Just as in making a jam or jelly, there is a choice to leave the seeds in the product, but nothing unobvious results. In this case, there are is no coaction of

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ingredients to make a new product. The product is made of flowers, sugar and water.

Pasteurized syrups are well known as in maple syrup, or corn syrup which are produced in mass and must have a particular shelf life. Attention is invited to *In re Levin*, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coercion or cooperative relationship between the selected ingredients which produces a new, unexpected, and useful function. *In re Benjamin D. White*, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; *In re Mason et al.*, 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221.(Underlining added). In this case no coercion of ingredients is seen to make a new, and unexpected product because applicant is basically adding rose petals to syrup, and both are known ingredients. Therefore, it would have been obvious to one of ordinary skill in the art to further fragment flowers if one wanted flowers in the solution, and to pasteurize or heat at various temperatures according to the end use of the product.

10. Regarding claims 4-6, *Ermakaryan* teaches the flowers are to be harvested when the flowers are in full blossom. The old and wilted petals are not to be used (col.

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1 lines 69-72). The flowers of Ermarkaryan are harvested in late May and early June (late spring) (col. 2 lines 1-2). From these teachings, one of ordinary skill would have found it obvious to discard the petals that first unfolded as these would be the oldest petals on the flower.

11. Regarding claims 8 and 11, Ermarkaryan states that his rose flavoring may be used in combination with food preservatives and other flavoring agents (col. 3 lines 24-25).

12. Ermarkaryan is silent as to a method for pasteurizing a solution comprising a sugary syrup and floral matter.

13. Francis teaches pasteurization of liquids where the temperature is raised to the desired temperature, held for the necessary length of time, and then quickly cooled to the desired temperature (p. 2306 col. 1). Table 1 (p. 2306) shows typical processing conditions for a variety of foodstuffs. Specific pasteurization conditions may vary widely within known ranges depending on the operator and the material to be pasteurized.

14. One of ordinary skill in the art at the time the invention was made wishing to provide microbial stability to the sugar solution would have found it obvious to pasteurize the solution, as pasteurization is a well-known technology in the art as is shown by the teachings of Francis. One of ordinary skill in the art at the time the invention was made would have been able, through no more than routine experimentation, to determine the appropriate heating and cooling temperatures and times as claimed for the pasteurization of a sugary syrup. Francis teaches that the pasteurization conditions may vary widely depending on the operator and the material to be pasteurized (p.

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2306). As pasteurization is a well known and widely used process for imparting microbial stability to foodstuffs, one of ordinary skill would have expected the sugary syrup to maintain the favorable organoleptic properties provided by the addition of floral material while at the same time posses the desired microbiological stability.

15. Applicant's claim to combining the floral material with a sugar solution are considered to be obvious over the teachings of Ermarkaryan where the rose petals are first combined with sugar, then combined with water to form a sugary solution.

Applicant's order of performing the mixing steps results in the same sugary syrup composition comprising floral material as the teachings of Ermarkaryan. As there are no unexpected results obtain, the change in order of the steps is considered to be obvious.

ARGUMENTS

Applicant's arguments filed 7-9-09 have been fully considered but they are not persuasive. Applicant argues that Ermarkaryan is to a food additive containing rose petals and sugar, and that the process does not use heat and that the petals are intact. However, as part of the patent cited by the examiner, was to making jam or jelly and just as applicant is doing, rose petals with sugar is added to water and heated to boiling, this makes a syrup, And just as applicant is doing, this syrup can be used to make jam or jelly product (col. 3, lines 15-25, lines 30-41).

Even though Ermarkaryan uses one type of rose, the secondary reference to Rose Petals, uses roses in general, and it would have been obvious to substitute such petals for the petals of Ermarkaryan because they both have the rose smell.

Applicant argues as in part 6 that Emarkaryan uses higher temperatures. However, the reference to Rose Petals uses simmering temperatures. Applicant is arguing a dry mixture of rose petals and sugar, which section was not cited by the Examiner just as the further argument as to heating is to the wrong passage. Nothing inventive is seen in fragmenting flowers to increase the surface area, as nothing new is seen in larger or smaller particles of petal. Nothing unobvious comes from treating the fragmented petal with sugar, but a sugar treated petal.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Helen F. Pratt/
Primary Examiner, Art Unit 1794

11-13-09